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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DEBORAH CAHILL, M.D.,

9 Plaintiff,

10 v.

11 FRANCISCAN HEALTH SYSTEM, a
12 Washington non-profit corporation,

13 Defendant.

CASE NO. C12-5829 BHS

ORDER GRANTING
PLAINTIFF'S MOTION TO FILE
FIRST AMENDED COMPLAINT

14 This matter comes before the Court on Plaintiff Deborah Cahill's ("Cahill")
15 motion to file first amended complaint (Dkt. 19). The Court has considered the pleadings
16 filed in support of and in opposition to the motion and the remainder of the file and
17 hereby grants the motion for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On July 25, 2012, Cahill filed a complaint in the Pierce County Superior Court for
20 the State of Washington against Defendant Franciscan Health System ("FHS"). Dkt. 1,
21 Ex. A. Cahill alleges disability discrimination, tortious interference with a business
22

1 expectancy, and a violation of the Washington Consumer Protection Act, RCW Chapter
 2 19.86. *Id.*

3 On September 14, 2012, FHS removed the matter to this Court. Dkt. 1.

4 On March 28, 2013, Cahill filed a motion to file first amended complaint (Dkt. 19)
 5 and the proposed first amended complaint (*id.*, Exh. A (“FAC”)). Briefly, Cahill moves
 6 to add a claim for breach of contract and breach of the covenant of good faith and fair
 7 dealing. Dkt. 19. Cahill alleges that, based on the particular application process
 8 implemented by FHS, a contract was formed between the parties and FHS breached that
 9 contract. *See generally*, FAC. On April 8, 2013, FHS responded. Dkt. 20. On April 12,
 10 2013, Cahill replied. Dkt. 21.

11 II. DISCUSSION

12 The Court should freely grant leave to amend a pleading when justice so requires.
 13 Fed. R. Civ. P. 15(a). The Court, however, may deny leave to amend when such an
 14 amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

15 In this case, FHS argues that Cahill’s proposed amendments would be futile
 16 because she fails to state a plausible claim for relief. This argument is considered under
 17 the same standard as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). On such a
 18 motion, the Court must accept the material allegations in the complaint as true and
 19 construe them in the light most favorable to the plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662.
 20 679 (2009). “To survive a motion to dismiss, a complaint must contain sufficient factual
 21 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 662
 22 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). The plaintiff must

1 provide “more than labels and conclusions, and a formulaic recitation of the elements of a
 2 cause of action will not do.” *Twombly*, 550 U.S. at 555.

3 Cahill seeks leave to amend to add a claim for breach of contract and breach of the
 4 covenant of good faith and fair dealing. Dkt. 19. On what appears to be an issue of first
 5 impression under Washington law, the Court finds that Cahill has alleged facts to state a
 6 plausible claim for relief. The parties have not cited, and the Court is unaware of, a case
 7 in Washington where the court addressed the question of whether an application for
 8 employment forms a contract between the applicant and the prospective employer.

9 Contrary to FHS’s contention, this case is not about whether employee bylaws alone form
 10 a contract between an applicant and employer. The relevant question is whether the
 11 promises FHS made regarding the evaluation of the application pursuant to the bylaws
 12 rise to the level of an enforceable contract. Therefore, the Court will consider the issue
 13 under the standard principles of contract law.

14 In Washington, a valid and binding contract between parties requires mutual
 15 assent, a proper and unrevoked offer, acceptance of that offer, and valuable consideration.
 16 *Lager v. Berggren*, 187 Wn. 462, 466–67 (1936). On the element of mutual assent,
 17 Cahill alleges that she assented to apply for credentials at FHS and FHS accepted review
 18 of her application on certain, explicit terms. Dkt. 19-2 (“FAC”), ¶¶ 19, 20. On the
 19 element of a proper and unrevoked offer, Cahill alleges that FHS offered to review her
 20 application on specific terms in exchange for a complete application and a non-
 21 refundable application fee. *Id.*; *see also id.*, Exh. A (FHS Credentials Manual). On the
 22 element of acceptance, Cahill accepted FHS’s offer by submitting her application and

1 non-refundable fee. *Id.* ¶ 19. On the element of consideration, FHS received a non-
 2 refundable application fee. Therefore, despite FHS's arguments to the contrary (Dkt. 20
 3 at 4–5), Cahill has sufficiently alleged a valid contract to review her application under
 4 certain, explicit standards. The Court also notes that FHS's arguments are based on
 5 showings of “objective evidence,” which is an incorrect standard for the instant motion
 6 because it is a higher threshold than the correct standard of plausible allegations.

7 Once a contract has been alleged, the next question is whether Cahill has asserted
 8 factual allegations sufficient to support a claim for breach of that contract. In
 9 Washington, to prevail on a breach of contract claim, the plaintiff must show an
 10 agreement between the parties, a party’s duty under the agreement, and a breach of that
 11 duty. *Lehrer v. Dept. of Social & Health Servs.*, 101 Wn. App. 509, 516 (2000). The
 12 Court has found sufficient allegations to support an agreement. On the element of duty,
 13 Cahill alleges that FHS had a duty to review Cahill’s application without regard to
 14 disability. *See* FAC ¶¶ 60, 61. On the element of breach, Cahill alleges that FHS
 15 rejected her application because of her disability. *Id.* Therefore, the Court finds that,
 16 based on the allegations in the FAC, Cahill’s breach of contract claim is not futile.

17 With regard to the other claim, Washington courts read an implied covenant of
 18 good faith and fair dealing into a contract “when the contract gives one party
 19 discretionary authority to determine a contract term.” *Goodyear Tire & Rubber Co. v.*
 20 *Whiteman Tire, Inc.*, 86 Wn. App. 732, 738 (1997). Cahill alleges that FHS had
 21 discretionary authority to evaluate her application and did so in “bad faith” and denied it
 22 for “arbitrary and discriminatory reasons” *Id.* ¶ 64. Therefore, the Court finds that

1 Cahill has sufficiently alleged a cause of action for breach of the duty of good faith and
2 fair dealing.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that Cahill's motion to file a first amended
5 complaint (Dkt. 19) is **GRANTED**. Cahill shall promptly file the amended complaint as
6 a separate entry on the electronic docket.

7 Dated this 29th day of April, 2013.

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10 BENJAMIN H. SETTLE
11 United States District Judge

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